

## REMARKS

Claim 1 was amended to incorporate the subject matter of claims 4, 6, 11, and 12 and 15, which have been canceled, without prejudice.

Care has been taken not to introduce any new matter.

### The Present Invention

The invention is directed to an insulated pouch that has a flexible bag and an insulating layer, and is suitable to heat food product in a microwave oven. The insulated pouch can be comfortably held after being heated by a consumer and food product can be consumed directly therefrom without requiring the use of conventional dishware.

Note, the element of Claim 1, described as "held by a consumer after heating" means comfortably held in the hand of the consumer (i.e., not burning) while the consumer is consuming all of the food product. See Specification at page 3, lines 18-20.

**Restriction**

Restriction to one of the following inventions was required under 35 U.S.C. 121:

- I. Claims 1-15, drawn to an insulated pouch, classified in class 426, subclass 106.
- II. Claims 16-19, drawn to a method of consuming a food product, classified in class 426, subclass 234.

Applicants affirm having elected to prosecute the invention of Group I, Claim 1-15 during a telephone conversation with the Examiner. However, election was with traverse for the following reasons. The respective claims are classified in the same classes, and it is respectfully submitted that only a single search would be appropriate and, accordingly, the Patent Office should consider the inventions together.

102(b)

Claims 1-3, 5-11 and 13 were rejected under 35 U.S.C. 102(b) as being anticipated by Smart, et al. (US 4,890,439). According to the Office Action, Smart, et al., disclose, as recited in claim 1, an insulated pouch comprising: a sealed (column 5, line 44-49) flexible bag (figure 3, item 14) comprising a food product (figure 3, item 28), the flexible bag not being permeable to water and having an opening means suitable to generate an access opening large enough to enable a consumer to consume food product directly from the insulated pouch (column 1, line 8-10; column 4, line 57-66).; It is interpreted that since the insulated, flexible bag of Smart, et al., is sealed so as to maintain the freshness and sanitary conditions within the bag from the point of shipping, displaying at a retail store and subsequent purchase and consumption by a consumer, it is required that the bag be impermeable to moisture (column 4, line 39-48).; In addition, since the flexible bag can be composed of polyester or PET, it is known that it will be impermeable to water.; As further recited in claim 1, Smart, et al., further disclose an insulating layer (column 6, line 28-31) covering at least a portion of the sealed flexible bag (figure 3, item 12), wherein the insulated pouch can be heated in a microwave oven (column 4, line 63-68) and held by a consumer after heating (column 1, line 8-10; column 4, line 57-68); etc.

While Applicants respectfully traverse the anticipation rejection of claims 1-3, 5-11 and 13 as not sufficiently identically disclosed by Smart et al. and for insufficient substantiation of elements deemed by the Office Action as "known", in an effort to expedite the prosecution of the present case to issuance without delay, Claim 1 has been amended to incorporate the subject matter of claims 4 and 12 which had not been so rejected.

103(a)

Claim 4 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439) as applied to claims 1-3, 5-11 and 13 above, and further in view of Garvey, et al. (US 5,241,150). According to the Office Action, Smart, et al., teach a flexible disposable food container that is insulated and can be heated and wherein the contents can be consumed directly from within the food container. Smart, et al., further teach a flexible, insulated, microwaveable food container that is meant to maintain its freshness from the point of packaging and shipping to the retail store for display and subsequent purchase and consumption by the consumer (column 4, line 39-48). Further according to the Office Action, Smart, et al., do not teach wherein the sealed flexible bag further comprises an oxygen barrier comprising polyvinylidene chloride (PVDC), ethylene vinyl alcohol (EVOH) or both.; Garvey, et al., teach insulating (column 6, line 48-63) a flexible, vapor impermeable (column 5, line 56-60), microwaveable package containing a food product wherein an additional layer to improve the freshness and shelf life of the food product is an oxygen barrier layer comprised of PVDC or EVOH (column 3, line 47-60); etc.

Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439) as applied to claims 1-3, 5-11 and 13 above, and further in view of Galomb (US 6,245,367 B1). The subject matter of Claim 12 has been combined with that of Claim 1. Smart, et al., do not teach wherein the insulating layer further comprises an attaching means for attaching an eating utensil.

Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439) as applied to claims 1-3, 5-11 and 13 above, and further in view of Lawless, et al. (US 5,395,632). According to the Office Action, Smart, et al.,

teach a flexible disposable food container that is insulated and can be heated and wherein the contents can be consumed directly from within the food container, as discussed above.; Smart, et al., further teach a flexible, insulated, microwaveable container that is to be displayed in a retail environment (column 4, line 39-48). Further according to the Office Action, Smart, et al., does not disclose wherein the top section comprises an orifice to hang the insulated pouch.; Lawless, et al., teach a flexible food package that further comprises an orifice (figure 6, item 38) for the purpose of displaying said product by suspending the package (column 5, line 49-60). ; etc.

Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Smart, et al. (US 4,890,439). The subject matter of claim 15 has been incorporated in claim 1; claim 15 has been deleted; without prejudice. Smart, et al., do not disclose wherein the insulating layer is positioned from about 0.5 to about 3.0 cm above the base of the insulated pouch.

Applicants respectfully traverse.

Smart et al. are primarily directed to microwaving and browning foods using a composite. In US Patent 5,241,150, a microwave food package having an orifice to dispense foodstuff is described.

None of the cited art describes an insulated pouch having heated product therein whereby the food product may be consumed directly out of the insulated pouch without the need for conventional dishware and while being held in the consumer's hand after heating. The unique claimed combination of elements is not obvious over the combination of references. Uniquely, according to the present invention, the bottom of insulating layer is place at least 0.5 cm to about 3.0 cm higher than the bottom of flexible bag so that the insulated pouch can stand.

CONCLUSION

Reconsideration of the rejection is respectfully requested in view of the above claim amendments and remarks. It is respectfully requested that the application be allowed to issue.

If a telephone conversation would be of assistance, Applicant's undersigned attorney invites the Examiner to telephone at the number provided.

Respectfully submitted,

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